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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,082	12/08/2005	Jean-Pierre Arnaud	446,039	7463

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EXAMINER	
YU, GINA C	

ART UNIT	PAPER NUMBER
1611	

MAIL DATE	DELIVERY MODE
08/12/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/530,082	ARNAUD ET AL.	
	Examiner	Art Unit	
	GINA C. YU	1611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 April 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-15,19 and 20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-15, 19, and 20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Receipt is acknowledged of amendment filed on March 25, 2009. The claim rejections made in the previous Office action dated November 25, 2008 are withdrawn in view of further search and consideration. New rejections are made as following.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-5, 10-11, 13-15, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over KROPE ET AL. (2002/0048597 A1) in view of BLONDEL et al. (WO 01/97772 A1).

Kropke teaches a water-in-oil emulsion comprising 3.50 % by weight of polyglyceryl-3 dioleate and 0.40 % by weight of lecithin. See Example 12. See also example 17, an emulsion lipstick, comprising the same amount of polyglyceryl acrylate and 1 % by weight of lecithin. The reference teaches hydrogenated polyisobutene is advantageously used for the prior art emulsion and illustrates in Example 7 an o/w emulsion comprising the said hydrocarbon oil in 1% by weight of the composition. See instant claim 3. In paragraph [0106], the reference teaches the aqueous phase of the composition can employ a thickener in the amount of 01-30 % by weight, preferably between 0.5-15 % by weight.

Although the reference teaches to add thickeners, the reference fails to teach a polyacrylamide and ammonium acrylate copolymer and/or anionic acrylic copolymer.

Villard teaches an emulsifying thickener obtained by polymerizing 2-acrylamido-2-methyl propane sulfonic acid (AMPS) and acrylic acid and useful for a thickener and emulsifier. See English equivalents (US 6303662 B1). The reference cites numerous advantages of using the emulsifying thickener, which includes high stability over a wide range of pH. The reference indicates that gel/cream made from this emulsifying thickener provides light texture without greasiness or tackiness and easily grasped by the hand; the oil-water emulsion of Example 5 containing the thickener is said to be light and has consistent feel and spread easily on the skin. The reference also teaches that the polymer can be incorporated at any temperature and the final products containing the polymer exhibits good stability and feel. See [0136-0141]. With respect to the method step of claim 19, Villard teaches the polymer is added during agitation of oil and water phases. Altering the sequence of adding the ingredients to make an oil-in-water emulsion of the prior art is not viewed a nonobvious method step absent evidence to the contrary.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the teachings of Kropke by incorporating the polyacrylamide/acrylic acid emulsifying thickener as motivated by Villard because 1) Kropke suggests using thickener or gelling agents to modify the oil-in-water emulsions of the invention; and 2) Villard teaches its copolymer is useful as emulsifier and/or thickener to stabilize oil-in-water emulsions at a wide pH range and provide good texture, feel, and spreadability to the composition. Since the copolymer is used to make

oil-in-water emulsions, the skilled artisan would have had a reasonable expectation of successfully producing stable emulsion cosmetics with improved stability and textures.

Claims 7-9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over KROPKE and VILLARD as applied to claims 1-5, 10-11, 13-15, 19, and 20 as above, and further in view of NAGAHAMA (US 6303662 B1).

Although Kropke teaches o/w emulsions containing polyglyceryl acrylates, the reference does not teaches polyglyceyrl-10 stearate and the particle size of the emulsions.

Nagahama teaches polyglyceryl-10 stearate (decaglycerol monostearate) is a nonionic polyglycerol mono-fatty acid ester having HLB of 12 or more, useful to make microemulsions. The reference teaches using the emulsifier in the amount of 0.3-3 parts by weight of the total amount of the oil phase, and the particle size may be increased if used more than 3 parts by weight. See col. 2, lines 48 -56. The comparative tests show that the particle size of the microemulsion depends on the polarity of the oil phase. See also col. 1, lines 46 – col. 2, lines 30.

It would have been obvious to one of ordinary skill in the art at the time of the present invention to modify the teachings of Kropke and Villard and incorporate polyglyceryl-10 stearate as motivated by Nagahama because the latter teaches the nonionic polyglycerol mono-fatty acid ester can be used in combination with oil phases of varying polarity to make microemulsions of desired particle sizes.

Regarding claim 9, although the individual reference does not specifically teach an intermediate combination of the polyacrylamide and acrylic copolymer/

phopholipid/polyglyceryl acrylate, the references teach the specific functions of each ingredient and in combination motivate a skilled artisan to make a useful emulsifier system. In this case, Villard teaches the copolymer as an emulsifier and thickener; Kropke teaches lecithin as an emulsion stabilizer; and Nagahama teaches polyglyceryl mono fatty acid esters as an emulsifier for making micro- or nanoemulsions. It would have been obvious to the skilled artisan to combine the emulsifiers to make an emulsifying thickener system which is useful to make a stable and viscous micro- or nanoemulsion.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over KROPE and VILLARD as applied to claims 1-5, 10-11, 13-15, 19, and 20 as above, and further in view of applicant's own admission.

Although Villard does not specifically indicate its AMPS based copolymer is sodium acrylate/acryloyldimethyl taurate copolymer, applicant discloses on specification p. 4, lines 5-10 that such polymer is described in the Villard patent and has been commercially available at the time of the present invention under the trade name Flocare DP/ET36 LM in the form of a liquid dispersion of the polymer at 60 % concentration.

It would have been obvious to one of ordinary skill of the art at the time of the present invention to use the AMPS-based copolymer of Villard because Villard teaches the advantages of using the emulsifying thickener in making cosmetic emulsions and was commercially available at the time of the present invention.

Response to Arguments

Applicant's arguments filed on April 7, 2009 have been fully considered but they are moot in view of the new grounds of rejections above.

Conclusion

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GINA C. YU whose telephone number is (571)272-8605. The examiner can normally be reached on Monday through Thursday, from 8:00AM until 6:00 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gina C. Yu/
Primary Examiner, Art Unit 1611